

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH - 'F' NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI , ACCOUNTANT MEMBER

ITA No. 5016/Del/2011
ASSESSMENT YEAR : 2008-09

Shri Rajesh Kumar, Prop. M/s. Shiv Shakti Trading Co. Indri, Karnal	Vs.	ITO , Ward 4, Karnal
(Appellant)		(Respondent)

Assessee by :	Shri Dharmendra Kumar, CA
Department by:	Shri F.R. Meena, Sr. DR
Date of Hearing	18//05/2017
Date of pronouncement	06 /06/2017

Per BHAVNESH SAINI, Judicial Member

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(A) Karnal dated 3rd August, 2011 for asstt. Year 2008-09. This appeal was earlier dismissed for default vide order dated 12th January , 2012. However by allowing miscellaneous application of assessee the appeal was refixed for hearing on merits.

2. We have heard Ld. Representatives of both the parties and perused the material on record.

3. On ground No. 1,2,3,4,5 and 7 assessee challenged the ex parte assessment order u/s 144 of the I.T. Act and application of NP Rate of 8%.

4. Briefly the facts of the case are that assessee filed return of income at Rs. 1,52,210/- on 30th September. The case was selected for scrutiny assessment. The AO in four pages of the assessment order noted various dates of hearing fixed at assessment stage calling for explanation of assessee on various items and also directed to produce books of accounts alongwith supporting bills/vouchers etc. However none have been produced before the AO. The AO also issued show cause notice as to why books of accounts be not rejected u/s 145 (3) and ex part order be not passed taking net profit rate @ 8% of the gross receipt but assessee continuously defaulted and did not produce the books of accounts and vouchers and also did not comply with statutory notices. The AO therefore passed ex parte order u/s 144 of the I.T. Act and by rejecting books of accounts of assessee directed to apply net profit rate for 8% of the gross receipts towards computing the net profit. The assessee challenged the addition before Ld. CIT(A) and it was submitted that application of NP rate of 8% is excessive. Ld. CIT(A) noted that assessee did not produce books of accounts and supporting vouchers before AO and no statutory notices have been complied with. Therefore, AO correctly framed ex parte assessment order u/s 144 of the I.T. Act. Ld. CIT(A) as regards application of NP rate of 8% also noted

that appeal of the assessee for asstt. Year 2007-08 has been decided by him in which the AO estimated the income by applying net profit rate of 12% of the gross receipts on the basis of decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Prabhat Kumar Contractor. Assessee during the appellate proceedings submitted that rate applied by the AO is very much on higher side since the same was applied @ 8% in the next year i.e the year under consideration . Ld. CIT(A) acceded to the request of assessee and the application of NP rate of 12 % as applied by the AO reduced the same to 8% in assessment year 2007-08. Ld. CIT(A) following the decision of Hon'ble Punjab & Haryana High Court and the Tribunal and following his order for asstt. Year 2007-08 confirmed application of the net profit rate at 8%.

5. After considering rival submissions, we do not find any merit in these grounds of appeal of assessee. Ld. Counsel for assessee filed copy of the assessment order for asstt. Year 2010-11 in the case of assessee dated 31st December 2012 u/s 143(3) and submitted that the books results have been accepted by the AO. However we find that in assessment year 2010-11 assessee produced books of accounts and relevant bills and vouchers before the AO which have been examined in which no adverse material was found against the assessee. However in the present case the assessee deliberately did not comply with the several notices and did not file any explanation before AO as well as did not reproduce books of accounts, bills and vouchers for examination by

the AO as well as before Ld. CIT(A). Even nothing is produced before us at the second appellate stage. Therefore the order for asstt, year 2010-11 cannot be considered favourably in favour of the assessee. In the absence of assessee and continuous default on the part of the assessee, authorities below was justified in passing and confirming the ex parte order u/s 144 of the Act. The Ld. CIT(A) also noted that in asstt. Year 2007-08, AO applied NP rate of 12% as per decision of the P & H High Court in the case of CIT vs. Prabhat Kumar Contractor (supra). The assessee however pleaded before him that 8% NP rate will be reasonable. Ld. CIT(A) accepted the request of the assessee and applied NP rate of 8%. Ld.CIT (A) therefore considering the history of the assessee and order of the Tribunal in the case of Sukhwinder Singh correctly applied NP rate of 8%. Therefore, we do not find any infirmity in the order of Ld. CIT(A) and application of rate of 8%. These grounds of appeals of assessee are dismissed.

6. On ground No. 6 assessee challenged the addition on account of sundry creditors. The AO noted that assessee has reflected unsecured creditors in a sum of Rs. 14.95 lacs but inspite of show cause notice assessee failed to furnish any documentary evidence in respect of their genuineness and creditworthiness of the same. Therefore, same was treated as income of assessee from undisclosed sources and addition was accordingly made. Ld. CIT(A) confirmed the addition in principle

because assessee failed to establish genuineness of the transaction in the matter. However, some telescoping given benefits was given.

7. After considering rival submissions, we do not find any merit in this ground of appeal of the assessee. Since sundry creditors were appearing in the books of accounts of the assessee ,therefore ,onus upon assessee to prove the identity of the creditors, creditworthiness and genuineness of the transactions in the matter. However, assessee failed to do anything in the matter and no documentary evidence was filed either before AO or before Ld. CIT(A). Therefore, onus upon assessee has not been discharged. Ld. Counsel for assessee merely contended that the assessee paid to the creditors the same amount in next year. In this regard also no evidences have been furnished. Even if the sundry creditors are paid in subsequent year by itself is no ground to delete the addition because assessee failed to explain the identity, creditworthiness and genuineness of the transaction in the matter. This ground of appeal of assessee is dismissed.

8. In the result appeal of assessee is dismissed

Pronounced in the Open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 06 .06.2017

Veena

Copy forwarded to: -

1. Appellant
2. Respondent
3. Principal CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,

ASSISTANT REGISTRAR